

## **Senate Bill No. 1326**

### **CHAPTER 226**

An act to amend Sections 1793.02 and 1795.6 of the Civil Code, relating to hearing aids.

[Approved by Governor August 21, 2014. Filed with  
Secretary of State August 21, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1326, Roth. Hearing aids: warranty: work order or receipt.

Existing law requires all new and used assistive devices sold at retail in this state to be accompanied by the retail seller's written warranty which is required to contain specified language including, among other things, that the assistive device may be returned to the seller within 30 days of the date of the actual receipt by the buyer or completion of fitting by the seller, whichever occurs later.

This bill would, with respect to hearing aids, require all new and used hearing aids sold in this state to be accompanied by the retail seller's written warranty which is required to contain specified language including, among other things, that if the device is not initially fit for the buyer's particular needs, it may be returned to the seller within 45 days of the initial date of delivery to the buyer.

Existing law requires the warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for \$50 or more to automatically be tolled from the date upon which the buyer takes certain actions.

This bill would, with respect to hearing aids, require the warranty period to resume on the date upon which the repaired or serviced hearing aid is delivered to the buyer or 5 days after the buyer is notified that the hearing aid is repaired or serviced and is available for the buyer's possession, whichever is earlier.

Existing law requires every manufacturer or seller of consumer goods selling for \$50 or more to provide a receipt to the buyer showing the date of purchase. Existing law requires every manufacturer or seller performing warranty repairs or service on the goods to provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced, as specified.

This bill would, with respect to hearing aids, require the seller, after receiving the hearing aid for warranty repairs or service, to provide at the time of delivery to the buyer a work order or receipt with the date the warranty period resumes and the revised expiration date of the warranty, as adjusted to reflect the suspension of the warranty period provided pursuant to these provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1793.02 of the Civil Code is amended to read:

1793.02. (a) (1) Except as provided in paragraph (2), all new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

(2) (A) All new and used hearing aids sold in this state shall be accompanied by the retail seller's written warranty and shall contain the following language: "This hearing aid is warranted to be specifically fit for the particular needs of you, the buyer. If the hearing aid is not initially fit for your particular needs, it may be returned to the seller within 45 days of the initial date of delivery to you. If you return the hearing aid, the seller will either adjust or replace the hearing aid or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws."

(B) In lieu of the words "45 days" the retail seller may specify any longer period.

(C) On the initial date of delivery, the retail seller shall revise the written warranty to include the initial date of delivery to the buyer of the hearing aid and expiration date of the warranty.

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

(d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall

be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any of the following sales of assistive devices:

(1) A catalog or similar sale, as defined in subdivision (q) of Section 1791, except a sale of a hearing aid.

(2) A sale which involves a retail sale price of less than fifteen dollars (\$15).

(3) A surgical implant performed by a physician and surgeon, or a restoration or dental prosthesis provided by a dentist.

(f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections 1793.2 and 1793.3.

SEC. 2. Section 1795.6 of the Civil Code is amended to read:

1795.6. (a) (1) Except as provided in paragraph (2) warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for fifty dollars (\$50) or more shall automatically be tolled for the period from the date upon which the buyer either (1) delivers nonconforming goods to the manufacturer or seller for warranty repairs or service or (2), pursuant to subdivision (c) of Section 1793.2 or Section 1793.22, notifies the manufacturer or seller of the nonconformity of the goods up to, and including, the date upon which (1) the repaired or serviced goods are delivered to the buyer, (2) the buyer is notified the goods are repaired or serviced and are available for the buyer's possession or (3) the buyer is notified that repairs or service is completed, if repairs or service is made at the buyer's residence.

(2) With respect to hearing aids, the warranty period shall resume on the date upon which (1) the repaired or serviced hearing aid is delivered to the buyer or (2) five days after the buyer is notified the hearing aid is repaired or serviced and is available for the buyer's possession, whichever is earlier.

(b) Notwithstanding the date or conditions set for the expiration of the warranty period, such warranty period shall not be deemed expired if either or both of the following situations occur: (1) after the buyer has satisfied the requirements of subdivision (a), the warranty repairs or service has not been performed due to delays caused by circumstances beyond the control of the buyer or (2) the warranty repairs or service performed upon the nonconforming goods did not remedy the nonconformity for which such

repairs or service was performed and the buyer notified the manufacturer or seller of this failure within 60 days after the repairs or service was completed. When the warranty repairs or service has been performed so as to remedy the nonconformity, the warranty period shall expire in accordance with its terms, including any extension to the warranty period for warranty repairs or service.

(c) For purposes of this section only, “manufacturer” includes the manufacturer’s service or repair facility.

(d) (1) Except as provided in paragraph (2), every manufacturer or seller of consumer goods selling for fifty dollars (\$50) or more shall provide a receipt to the buyer showing the date of purchase. Every manufacturer or seller performing warranty repairs or service on the goods shall provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced or, where applicable, the date the goods were shipped or delivered to the buyer.

(2) With respect to hearing aids, the seller, after receiving the hearing aid for warranty repairs or service, shall also provide at the time of delivery to the buyer a work order or receipt with the following: (1) the date the warranty period resumes and (2) the revised expiration date of the warranty, as adjusted to reflect the suspension of the warranty period provided under this section.